

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

JAIME ANDRES MARTINEZ,

§

Plaintiff,

§

v.

§

**TYSON FOODS, INC., ELIEZER
HERNANDEZ, MANUEL RETANA,
AND PETER BERNARD,**

CIVIL ACTION NO. 3:15-cv-2349

Defendants.

§

DEFENDANTS' NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1441, Defendants, Tyson Foods, Inc. ("Tyson"), Eliezer Hernandez ("Hernandez"), Manuel Retana ("Retana"), and Peter Bernard ("Bernard") (collectively, "Defendants") hereby remove to this Court, the state court action described in Paragraph 1 below. Pursuant to 28 U.S.C. § 1446(a), Defendants set forth the following "short and plain statement of the grounds for removal."

A. THE REMOVED CASE

1. The removed case is a civil action filed with the 95th Judicial District Court of Dallas County, Texas, on May 18, 2015, styled *Jaime Andres Martinez v. Tyson Foods, Inc., Eliezer Hernandez, Manuel Retana, and Peter Bernard*, Cause No. DC-15-05828.

B. DOCUMENTS FROM REMOVED ACTION

2. Pursuant to Local Rule 81.1, Defendants attach the following documents to this Notice of Removal:

- (a) an index of all documents that clearly identifies each document and indicates the date the document was filed in state court;

- (b) a copy of the docket sheet in the state court action; and
- (c) each document filed in the state court action, except discovery material, with each document filed as a separate attachment; and

Additionally, Defendants are simultaneously filing a separately signed Certificate of Interested Persons that complies with Local Rule 3.1(c).

C. REMOVAL IS TIMELY

3. Plaintiff, Jaime Andres Martinez ("Plaintiff" or "Martinez"), filed the present civil suit against Defendants in the 95th Judicial District Court of Dallas County, Texas ("the Dallas County court"), on May 18, 2015. Tyson was served with Plaintiff's Original Petition ("the Petition") on June 23, 2015. Plaintiff also served the Petition Hernandez, Retana, and Bernard on June 18, 2015. In the Original Petition, Plaintiff asserts negligence-based causes of action and claims for personal injury damages against Defendants.

4. Defendants have filed this Notice of Removal within thirty days after receiving papers indicating that the present lawsuit was filed in the Dallas County court, and subsequently became removable to the United States District Court for the Northern District of Texas. Defendants, therefore, contend that this removal is timely made.¹

D. VENUE IS PROPER

5. The United States District Court for the Northern District of Texas, Dallas Division, is the proper venue for removal of the state court action pursuant to 28 U.S.C. § 1441(a) because the 95th Judicial District Court of Dallas County, Texas, is located within the jurisdiction of the United States District Court for the Northern District of Texas, Dallas Division.

¹ See, 28 U.S.C. § 1446(b)(3).

E. DIVERSITY OF CITIZENSHIP EXISTS

6. This is a civil action that falls under the Court's original jurisdiction pursuant to 28 U.S.C. § 1332 and is one that may be removed to this Court based on diversity of citizenship in accordance with 28 U.S.C. §§ 1441 and 1446.

7. As admitted in the Petition, Plaintiff resides in Tarrant County, Texas.²

8. Tyson Foods, Inc. is a foreign corporation formed under the laws of the State of Delaware. Additionally, Springdale, Washington County, Arkansas is the primary place of business for Tyson. Pursuant to 28 U.S.C. § 1332(c)(1), Tyson is not a citizen of the State of Texas.

9. Hernandez, Retana, and Bernard were improperly joined as Defendants to the present lawsuit.³ Because no reasonable basis for recovery by Plaintiff exists against Hernandez, Retana, and Bernard, the assumed or actual residence of Hernandez, Retana, and Bernard should be disregarded in establishing diversity jurisdiction since Hernandez, Retana, and Bernard are improperly joined parties.⁴

9. Because Martinez is a resident of the State of Texas and Tyson is not, complete diversity of citizenship exists pursuant to 28 U.S.C. § 1332.

F. THE AMOUNT IN CONTROVERSY REQUIREMENT IS SATISFIED

11. In the Petition, Plaintiff specifically pleads that he is seeking "[m]onetary relief over \$1,000,000."⁵

12. Based on the aforementioned facts, the current state court action may be removed

² See, "Plaintiff's Original Petition and Requests for Disclosures" at p. 1.

³ See, *Benavides v. EMC Mortg. Corp.*, 916 F. Supp. 2d 776, 780 (S.D. Tex. 2013) (citing *Smallwood v. Ill. Cent. R.R. Co.*, 385 F.3d 568 (5th Cir. 2004) (en banc), cert. denied, 544 U.S. 992, 125 S.Ct. 1825, 161 L.Ed.2d 755 (2005)).

⁴ *Benavides* at 782-83; *Leitch v. Hornsby*, 935 S.W.2d 114, 117 (Tex. 1996).

⁵ See, "Plaintiff's Original Petition and Requests for Disclosures" at p. 15.

to the United States District Court for the Northern District of Texas, Dallas Division, by Defendants in accordance with the provisions of 28 U.S.C. § 1441(a) because: (i) this action is a civil action pending within the jurisdiction of the United States District Court for the Northern District of Texas; (ii) this action is between citizens of different states; and (iii) the amount in controversy will exceed \$75,000, exclusive of interest and costs.

G. FILING OF REMOVAL PAPERS

13. Pursuant to 28 U.S.C. § 1446(d), Tyson is providing written notice of the filing of this Notice of Removal to all counsel of record and is filing a copy of this Notice with the Clerk of the 95th Judicial District Court of Dallas County, Texas, in which this action was originally commenced.

H. CONCLUSION

14. Defendants hereby remove the above-captioned action from the 95th Judicial District Court of Dallas County, Texas, and request that further proceedings be conducted in the United States District Court for the Northern District of Texas, Dallas Division, as provided by law.

Respectfully submitted,

KANE RUSSELL COLEMAN & LOGAN PC

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**ATTORNEYS FOR DEFENDANTS TYSON
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MANUEL RETANA, AND PETER BERNARD**

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of July 2015, a true and correct copy of the foregoing has been forward to all counsel of record, as follows.

**VIA ECF AND CERTIFIED MAIL,
RETURN RECEIPT REQUESTED**

Marisol Lopez
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Garland, Texas 75040

s/ Brian J. Fisher
Brian J. Fisher